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7 Erin Capital Management, LLC

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 JAMES SNOW, an individual,)
11)
12 Plaintiff,)
vs.)
13)
ERIN CAPITAL MANAGEMENT, LLC a))
14 limited liability company; and DOES 1)
15 through 10 inclusive;)
16)
Defendants.)
17)
18)

Case No. C08 01370 PVT

ERIN CAPITAL MANAGEMENT,
LLC'S FIRST AMENDED ANSWER
TO COMPLAINT

19 Defendant ERIN CAPITAL MANAGEMENT, LLC ("Erin") submits this
20 First Amended Answer and Affirmative Defenses to Plaintiff's Complaint and
21 states as follows:

22 I. INTRODUCTION

24 1. Erin admits Plaintiff's action is brought under the statutes set forth
25 in ¶ 1 of the Complaint, but denies any wrongdoing or liability under the law.

II. JURISDICTION AND VENUE

2. Erin admits the allegations set forth in ¶ 2 of the Complaint for jurisdiction and venue purposes only.

III. PARTIES

3. Erin lacks sufficient information to answer the allegations contained in ¶ 3 of the Complaint, and based thereon denies the same.

4. Erin admits it is a limited liability company based in New York.

Erin further admits it engages in the business of purchasing debt for collection, including the debt of California consumers. Except as specifically admitted, Erin denies the remaining allegations contained in ¶ 4 of the Complaint.

5. Erin admits that when it acts as a debt collector as defined by 15 U.S.C. § 1692a(6) and/or Cal. Civ. Code § 1788.2(c), its conduct may be governed by the applicable provisions of the FDCPA and/or Rosenthal Act. Erin further admits it engages in the business of purchasing debt for collection. Except as specifically admitted, Erin denies the remaining allegations contained in ¶ 5 of the Complaint.

6. Erin lacks sufficient information to answer the allegations contained in ¶ 6 of the Complaint, and based thereon denies the same.

7. Erin admits the allegations contained in ¶ 7 of the Complaint.

8. Erin admits the debt at issue is a Citibank Mastercard debt, but lacks sufficient information to answer the allegations contained in ¶ 8 of the Complaint.

i.e., whether the debt was incurred primarily for personal, family or household purposes, and based thereon denies the same.

9. Erin admits the debt at issue is a Citibank Mastercard debt, but lacks sufficient information to answer the allegations contained in ¶ 9 of the Complaint, i.e., whether the debt was incurred primarily for personal, family or household purposes, and based thereon denies the same.

10. Erin admits the debt at issue is a Citibank Mastercard debt, but lacks sufficient information to answer the allegations contained in ¶ 10 of the Complaint, i.e., whether the debt was incurred primarily for personal, family or household purposes, and based thereon denies the same.

IV. FACTUAL ALLEGATIONS

11. In response to ¶ 11 of the Complaint, Erin avers that the cited statute speaks for itself and refers all matters of law to the Court.

12. Erin admits it purchased plaintiff's Citibank Mastercard account on which plaintiff had made purchases. Except as expressly admitted, Erin lacks sufficient information to answer the remaining allegations contained in ¶ 12 of the Complaint and based thereon denies the same.

13. Erin lacks sufficient information to answer the allegations regarding the card expiration date contained in ¶ 13 and based thereon denies the same. Erin denies, on information and belief based on account records, the allegations regarding lack of charges or payment after late 2002 contained in ¶ 13.

14. Erin admits the allegations contained in ¶ 14 of the Complaint

1 15. Erin admits, on information and belief based on account records, that
2 plaintiff last made a payment on his Citibank Mastercard account on March 3,
3 2003. Erin further admits, on information and belief, the complaint in San Mateo
4 Superior Court Case No. CLJ461594 was filed March 19, 2007. Erin avers that it
5 relied on the advice and expertise of counsel who prepared and filed the action on
6 Erin's behalf. Erin further avers the complaint filed in San Mateo Superior Court
7 Case No. CLJ461594 is the best evidence of its content. Erin lacks sufficient
8 information to respond to the legal conclusions contained in ¶ 15 and based
9 thereon denies the same. Except as expressly admitted, Erin denies the remaining
10 allegations contained in ¶ 15 and refers all matters of law to the court.

13 16. Erin lacks sufficient information to answer the allegations contained
14 in ¶ 16 of the Complaint, and based thereon denies the same.

16 17. Erin lacks sufficient information to answer the allegations contained
17 in ¶ 17 of the Complaint, and based thereon denies the same.

18 18. Erin admits plaintiff contends he resided in San Benito County at all
19 relevant times and further admits the complaint in San Mateo Superior Court Case
20 No. CLJ461594 was filed in San Mateo County. Erin avers that it relied on the
22 advice and expertise of counsel who prepared and filed the action on Erin's behalf.
23 Erin further avers the complaint filed in San Mateo Superior Court Case No.
24 CLJ461594 is the best evidence of its content. Erin lacks sufficient information to
25 respond to the legal conclusions contained in ¶ 18 and based thereon denies the
26

1 same. Except as expressly admitted, Erin denies the remaining allegations
2 contained in ¶ 18 and refers all matters of law to the court.
3

4 19. Erin admits the allegation contained in ¶ 19 of the Complaint, and
5 avers the complaint filed in San Mateo Superior Court Case No. CLJ461594 is the
6 best evidence of its content.

7 20. Erin admits plaintiff contends he resided in San Benito County at all
8 relevant times and further admits the complaint in San Mateo Superior Court Case
9 No. CLJ461594 alleges plaintiff lived in San Mateo County. Erin avers that it
10 relied on the advice and expertise of counsel who prepared and filed the action on
11 Erin's behalf. Erin further avers the complaint filed in San Mateo Superior Court
12 Case No. CLJ461594 is the best evidence of its content. Except as expressly
13 admitted, Erin denies the remaining allegations contained in ¶ 20 and refers all
14 matters of law to the court.

15 21. Erin admits it was a limited liability company, and not a corporation,
16 at the time of filing of the complaint in San Mateo Superior Court Case No.
17 CLJ461594. Erin avers that it relied on the advice and expertise of counsel who
18 prepared and filed the action on Erin's behalf. Erin further avers the complaint
19 filed in San Mateo Superior Court Case No. CLJ461594 is the best evidence of its
20 content. Except as expressly admitted, Erin denies the remaining allegations
21 contained in ¶ 21 and refers all matters of law to the court.

22 22. Erin admits it purchased plaintiff's Citibank Mastercard account
23 within four years prior to the filing of the complaint in San Mateo Superior Court
24

1 Case No. CLJ461594. Erin avers that it relied on the advice and expertise of
2 counsel who prepared and filed the action on Erin's behalf. Erin further avers the
3 complaint filed in San Mateo Superior Court Case No. CLJ461594 is the best
4 evidence of its content. Except as expressly admitted, Erin denies the remaining
5 allegations contained in ¶ 22 and refers all matters of law to the court.

7 23. Erin admits a proof of service was filed in San Mateo Superior Court
8 Case No. CLJ461594 on October 1, 2007 and avers the proof of service is the best
9 evidence of its content. Erin further avers it relied on the advice and expertise of
10 counsel who represented Erin in the action. Except as expressly admitted, Erin
11 lacks sufficient information to answer the remaining allegations contained in ¶ 23
12 of the Complaint, and based thereon denies the same and refers all matters of law
13 to the court.
14

16 24. Erin lacks sufficient information to answer the allegations contained
17 in ¶ 24 of the Complaint, and based thereon denies the same.
18

25. Erin admits a proof of service was filed in San Mateo Superior Court
26 Case No. CLJ461594 and avers the proof of service is the best evidence of its
27 content. Erin further avers it relied on the advice and expertise of counsel who
28 represented Erin in the action. Erin lacks sufficient information to respond to the
legal conclusions contained in ¶ 25 and based thereon denies the same. Except as
expressly admitted, Erin denies the remaining allegations contained in ¶ 25 and
refers all matters of law to the court.

27 26. Erin admits the allegations contained in ¶ 26 of the Complaint.
28

27. Erin lacks sufficient information to answer the allegations contained in ¶ 27 of the Complaint, and based thereon denies the same. Erin further avers it relied on the advice and expertise of counsel who represented Erin in the action.

28. Erin admits the allegations contained in ¶ 28 of the Complaint.

29. Erin admits the account records of Eltman, Eltman & Cooper, P.C., indicate calls were made to plaintiff in February 2008. Except as specifically admitted, Erin lacks sufficient information to answer the remaining allegations contained in ¶ 29 of the Complaint, and based thereon denies the same.

30. Erin lacks sufficient information to answer the allegations contained in ¶ 30 of the Complaint, and based thereon denies the same.

31. Erin lacks sufficient information to answer the allegations contained in ¶ 31 of the Complaint, and based thereon denies the same.

32. Erin admits a stipulation to set aside judgment and for dismissal was filed in San Mateo Superior Court Case No. CLJ461594 on March 19, 2008. Except as expressly admitted, Erin lacks sufficient information to answer the remaining allegations contained in ¶ 32 of the Complaint, and based thereon denies the same.

33. Erin lacks sufficient information to answer the allegations contained in ¶ 33 of the Complaint, and based thereon denies the same.

V. FIRST CLAIM FOR RELIEF

(Against all Defendants for Violation of the FDCPA)

1 34. Erin incorporates by reference all of the foregoing paragraphs as
2 though set forth in full.
3

4 35. Erin denies the allegations contained in ¶ 35, and subparagraphs a
5 through h, inclusive, of the Complaint.
6

7 36. Erin denies the allegations contained in ¶ 36 and further specifically
8 denies that plaintiff is entitled to damages in any amount whatsoever.
9

VI. SECOND CLAIM FOR RELIEF

10 (Against all Defendants for Violation of the Rosenthal Act)

11 37. Erin incorporates by reference all of the foregoing paragraphs as
12 though set forth in full.
13

14 38. Erin denies the allegations contained in ¶ 38, and subparagraphs a
15 through c, inclusive, of the Complaint.
16

17 39. Erin denies the allegations contained in ¶ 39 and further specifically
denies that plaintiff is entitled to damages in any amount whatsoever.
18

19 40. Erin denies the allegations contained in ¶ 40 and further specifically
20 denies that plaintiff is entitled to damages in any amount whatsoever.
21

AFFIRMATIVE DEFENSES

22 1. The Complaint fails to state a claim upon which relief may be
23 granted.
24

25 2. Pursuant to 15 U.S.C. § 1692k(c), to the extent that a violation(s) is
26 established, any such violation(s) was not intentional and resulted from a bona fide
27 error notwithstanding maintenance of procedures reasonably adapted to avoid any
28

1 such violation.

2 3. Pursuant to California Civil Code § 1788.30(e), to the extent that a
3 violation(s) is established, any such violation(s) was not intentional and resulted
4 from a bona fide error notwithstanding maintenance of procedures reasonably
5 adapted to avoid any such violation.

6 4. Plaintiff's right to recovery under the Rosenthal Act is barred by the
7 litigation privilege, Cal. Civ. Code § 47(b).

8 5. At all times relevant to the allegations contained in the Complaint,
9 defendant relied on the advice and expertise of counsel.

10 Dated: 9/2/08 SESSIONS, FISHMAN, NATHAN & ISRAEL L.L.P.

11 _____
12 /s/*Debbie P. Kirkpatrick*
13 Debbie P. Kirkpatrick,
14 Attorney for Defendant,
15 Erin Capital Management, LLC